

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

VICKY JONES,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Civil Action No.: 03:05-cv-0420F

**PLAINTIFF'S RESPONSE TO THE DEFENDANT'S MOTION TO DISMISS, OR IN
THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

COMES NOW the Plaintiff, Vicky Jones, and responds to the Defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment as follows:

FACTUAL ALLEGATIONS

I. The Plaintiff has attached to this response exhibit A which is the Plaintiff's Appeal of Claim Denial, which was sent to Commander, U.S. Army Claims Service on November 8, 2004. In that appeal, the chronology of factual events giving rise to this claim are stated. The Plaintiff adopts the facts stated in the appeal marked as Plaintiffs exhibit A to this response.

STANDARD OF REVIEW

II. The standard of review pursuant to this Motion is that any ambiguities are construed in a light most favorable to the non-movant, Plaintiff. Miccosukee Tribe of Indians of FL. v. So.Everglades Restoration alliance, 304 F3d. 1076, 1084 (11th Cir. 2002). The Plaintiff's complaint can only be dismissed pursuant to this Motion if "it appears beyond doubt that the Plaintiff can prove no set of facts in support of her claims which would entitle her to relief".

Jones v. Am.Gen. Life and Accident Insurance Co., 370 F3d 1065, 1069 (11th Cir. 2004).

ARGUMENT

III. In response to the Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, the Plaintiff has attached exhibits A & B to her response. First of all, exhibit A clearly states the factual chronology of events giving rise to this lawsuit. Secondly, exhibit B, which is a letter to the Plaintiff's counsel from the Department of the Army, states that the Plaintiff may file suit in the appropriate U.S. District Court not later than six months from the date of that letter if she is dissatisfied with the action taken pursuant to her claim. The Plaintiff, following the directions from the department of the army in Exhibit B, did file an appeal within six months, which has yet to be decided. And, in order to preserve all potential avenues of relief, Plaintiff did in fact file this lawsuit in the United States District Court.

Since the Plaintiff's appeal has not yet been decided, Plaintiff asserts that it is premature to dismiss this cause of action. If the appeal is decided in favor of the Plaintiff, obviously, the Plaintiff would agree to dismiss this cause of action. However, while that appeal is pending, dismissal of this claim is premature.

WHEREFORE, Plaintiff respectfully request that this Court deny the Defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment.

/s/ Richard F. Horsley
Richard F. Horsley HOR023
Attorney for Plaintiff

OF COUNSEL:
GOOZÉE, KING & HORSLEY, LLP
Shades Brook Building, Suite 200
3300 Cahaba Road
Birmingham, Alabama 35223
(205) 871-1310

CERTIFICATE OF SERVICE

I do hereby certify that I have served the foregoing Plaintiff's Response to the Defendants Motion to Dismiss or in the Alternative for Summary Judgement on all counsel of record, by placing a copy of same in the United States Mail, first class postage prepaid on this the 5th day of August, 2005.

/s/ Richard F. Horsley
Richard F. Horsley HOR023
Attorney for Plaintiff

R. Randolph Neeley, Esq.
Assistant United States Attorney
Post Office Box 197
Montgomery, Alabama 36101-0197